DEPARTMENT OF FINANCE
Chart B (Revised): Responses to 15-day comment period
Regulations to Implement S.B. 617 Re Major Regulations

Comments	Responses
Sections 2000 (e) and (g) **1. Department of Insurance** Defining the calculation of whether proposed regulations constitute a major regulation to include the sum of the absolute values of both costs and savings, as well as direct, indirect and induced costs, without regard to offsetting benefits, would impermissibly amend the statutory threshold for major regulations. For purposes of the Department's rulemaking work, the major regulation threshold could effectively be lowered to $10.5 million, thus violating the authority, reference, consistency and necessity standards of the Administrative Procedure Act (the APA). The insurance industry typically is assigned a multiplier of 2.3 to 2.4 for purposes of calculating the ripple effect of indirect and induced costs and savings of proposed regulations. This means that, under the new language added to proposed Sections 2000(e) and (g) in the modified text, a regulation that will produce combined costs and savings of $21 million, times 2.4, would be calculated to have an economic impact of more than $50 million. Hence, it is possible that a regulation that costs the industry only $10.5 million (which, in terms of the multibillion-dollar-a-year insurance industry regulated by the Department, is relatively minor) would constitute a major regulation. This incongruity with SB 617 can perhaps be best illustrated by the example of a regulation that only saves money, say $21 million, and imposes no costs. Such a regulation would be defined as a major regulation under the latest version of the proposed regulations, because the multiplier would put the	**Response:** The comment that the regulation would impermissibly amend the statutory threshold for major regulations was rejected because the effect attributed to the regulation by the commenter is incorrect for two reasons. First, the definition of economic impact is all costs or benefits not a sum of the absolute value of the two. Second, using the methodology suggested by the comment would result in raising the threshold for a major regulation to several multiples of $50 million, not result in a lowering of the statutory threshold of $50 million.

Comments	Responses
economic impact at $51 million. The Department doubts that the Legislature ever intended that the promulgation of such a beneficial regulation should be burdened by the exhaustive economic analysis DoF is requiring to be included in the Standardized Regulatory Impact Analysis (SRIA) by means of the proposed regulations. Rather, the whole point of SB 617 is to ensure that regulations promulgated by state agencies are cost-effective. This unwarranted expansion of the statutory definition of "major regulation" also violates the consistency standard of the APA. This is because the definition runs counter to the goal of promoting transparent evaluation of the economic impact of proposed regulations, as intended by SB 617. These latest changes will instead produce the unintended effect of encouraging agencies to lowball the savings resulting from proposed regulations, in order to avoid the significant additional costs, resources and lead time that will be required in order to complete the SRIA.	The comment that this regulation violates the consistency standards because it runs counter to the goal of promoting transparent evaluation of the economic impact of proposed regulations is rejected because the regulation is not inconsistent with another law or regulation. The Department is aware that lowballing and disaggregation of regulations are a potential problem. Should agencies begin to propose a large number of smaller regulations that seem to be part of a bigger whole or appear to be lowballing their estimates with respect to costs or benefits, the Department may choose to call this to the Legislature's attention in the periodic review to be completed in 2015. The Department also will be monitoring the implementation of these regulations, and plans to be active during the public comment phase of the rulemaking process.

Comments	Responses
2. California Energy Commission (Although the California Energy Commission comments were received after the 15-daycomment period ended, due to extenuating circumstances noted in the California Energy Commission's letter, we have accepted the late submittal of these comments.) **Section 2000(e)** A change to the definition of "economic impact" in proposed section 2000(e) provides that an economic impact means all costs *or* all benefits (direct, indirect, and induced) of a proposed major regulation. Section 2000(g) uses this phrase to define a major regulation as one that will have an economic impact exceeding $50,000,000 in any 12-month period between the publication date and a year after the full implementation date. This revision means that a regulation is major whether it results in costs of $50,000,000, or *in benefits* to California businesses (such as through a repeal of a regulation). This revision will trigger an SRIA even if the regulation is beneficial, contrary to legislative intent that agencies "assess the potential for *adverse* economic impacts." (Gov. Code § 11346.3, subd. (a) (emph. added).) We recommend that if the Department does not agree that a major regulation should be calculated based on its *net* economic impact to any given party, then it should at least clarify that a major regulation is one with an *adverse* (cost) impact. As we mentioned in our previous comments, the definition of "major regulation" still does not provide sufficient guidance, and the Department's other proposed regulations describing how to conduct the SRIA focus on other impacts of an agency's	Response: These comments are related to the original text, not the modified text, and therefore no response is required. (Please see responses to comments concerning the original text of section 2000(e).)

Comments	Responses
proposed regulation, and on analyzing alternatives to a proposed regulation. (Compare proposed sections 2003(a)(1), (a)(3)(C) [use of model with capability to estimate economic changes and business impacts but no guidance of how to do so]; and 2003(c) [requirement to identify impacts on "different groups [if impacts] will differ significantly" but no guidance how to identify or define "groups," "significant" differences in impacts, or other aspects of analysis].) We continue to recommend that the Department add a new section that provides additional guidance on how to determine whether a proposed regulation is a "major regulation" or specify criteria for how the Department will evaluate an agency's determination that a proposed regulation is or is not major.	
Section 2001(a) **1. California Energy Commission** Proposed section 2001, subdivision (a)(2), requires an agency to notify the Department of a major regulation that was not anticipated until after February 1st at least 60 days before filing a Notice of Proposed Action with the Office of Administrative Law. But the SRIA itself is also due 60 days before filing the Notice of Proposed Action with the Office (or *90 days* if the agency does not notify the Department within *60 days* of the Notice of Proposed Action), so this requirement seems pointless and inconsistent with Section 2002(a)(2). We continue to recommend deleting this additional notice requirement.	**Response:** These comments are related to the original text, not the modified text, and therefore no response is required. (Please see responses to comments concerning the original text of section 2001(a).)

Comments	Responses
Section 2001(d) **1. California Energy Commission** Proposed section 2001(d) requires the agency to seek public input regarding alternatives from those who would be subject to or affected by the major regulation. Although the Energy Commission frequently engages the public and key stakeholders in discussions before proposing regulations, the Department's requirement goes significantly beyond what existing rulemaking law requires, and may therefore exceed the Department's authority. Existing law permits, but does not require, agencies to consult with interested persons before the Notice of Proposed Action. (Gov. Code, § 11346, subd. (b).) For "complex proposals or a large number of proposals that cannot easily be reviewed during the comment period," existing law requires state agencies, before publishing the Notice of Proposed Action, to involve only those parties who would be subject to the proposed regulations. (Gov. Code, § 11346.45, subd. (a).) But the Department requires this for any major regulation, regardless of its complexity, and expands the requirement to anyone (directly or indirectly) "affected by" the regulations. The section should be at most permissive, or at least remove the words "or affected by."	**Response:** These comments are related to the original text, not the modified text, and therefore no response is required. (Please see responses to comments concerning the original text of section 2001(d).)

Comments	Responses
Section 2002(a) **2. California Energy Commission** The 60-day and 90-day deadlines for submitting the standardized regulatory impact assessment to the Department of Finance other than "upon completion" as specified in Government Code section 11346.3, subdivision (f), should be clarified as advisory rather than mandatory. A missed deadline does not and should not foreclose an agency from adopting a proposed regulation, where the Department of Finance lacks statutory authority to disapprove an impact assessment or otherwise halt a rulemaking proceeding. What the Department has done instead is create a mandatory 30-day wait period between when the Department is statutorily required to comment on the SRIA and when the agency may publish its Notice of Proposed Action. This requirement is not founded in statute, and would delay the implementation of key regulations – even when the Department has no adverse comments on a proposed SRIA - rather than provide any additional benefit to the public, the agency, or the Department. A real-world example illustrates the potential harm of the proposed regulation. The Energy Commission is currently analyzing regulations establishing minimum standards for energy efficiency of consumer electronics. The regulations are estimated to save over 10,000 gigwatt-hours of electricity per year, once all of the products in the state that are subject to the contemplated	**Response:** These comments are related to the original text, not the modified text, and therefore no response is required. (Please see responses to comments concerning the original text of section 2002(a).)

Comments	Responses
standards have been replaced with products meeting them. Assuming consumers pay an average of $0.15 per kilowatt-hour of electricity; these contemplated standards are estimated to ultimately save California consumers $1.5 billion per year in avoided electricity costs. Under the Energy Commission's governing statutes, these kinds of regulations usually may not become effective sooner than one year after they have been adopted. Implementation and energy savings are therefore tied directly with the timeliness of completing the rulemaking. A 30-day "waiting period" for the Department to conduct its review would itself have a "major" (more than $50 million) cost impact on California consumers. Assuming the consumer electronics that would be subject to the contemplated standards have an average useful life of 5 years, while the Department conducts its review one additional month of "inefficient" devices would be sold that would then be used in the marketplace for 5 years (60 months). Over their useful lives, these products will cost consumers 1/60 of the total estimated annual savings, or $125 million in increased energy bills. The delay will also cause increased carbon emissions, use of non-renewable natural resources such as natural gas to generate electricity, and the associated health impacts of additional air pollution. If an agency needs 30 days, or even 60 days, to revise its SRIA in response to the Department's comments, then it can certainly delay releasing its Notice of Proposed Action (which is not a fixed date in any case). But if the Department has no comments, then an agency should not be required to wait 30 days to release its Notice of Proposed Action. We recommend changing this requirement to 30 days, consistent with Government Code section 11346.3, subdivision (f).	

Comments	Responses
Related to the above comment, the Department's proposed regulations should clarify that if the Department fails to meet its obligation to comment on a SRIA within 30 days, it will be deemed to have no comments. This will ensure that regulations are not unnecessarily delayed.	
Section 2002(c)(8) **1. Department of Insurance** The requirement — new with the modified text — that the SRIA identify the economic impact of regulatory alternatives runs afoul of the authority, consistency and necessity standards of the APA. As we stated in prior comments, SB 617 does not contain a grant of rulemaking authority that would enable DoF to require that rulemaking agencies perform an economic analysis of regulatory alternatives before issuing a notice of proposed action or to require that such an analysis be included in the SRIA. The Legislature clearly distinguished OAL's authority to specify methodologies for assessing the costs and benefits of proposed regulations themselves (Gov. Code § 11346.36, subd. (b)(1)) from its authority to specify methodologies for comparing proposed alternatives and making the cost-effectiveness determination that agencies are not required to make until the end of the process (Gov. Code § 11346.36, subd. (b)(2)); Gov. Code § 11346.9, subd. (a)(4)). The reason why this distinction is necessary is that it is highly unlikely that the Legislature intended for SB 617 to eviscerate the existing provisions of the APA by forcing the entire rulemaking process into prenotice activities, as these proposed regulations attempt to do. The new requirement that the SRIA contain an economic	**Response:** The comment that the modified text makes a new requirement that the SRIA identify the economic impact of regulatory alternatives is rejected. The version of this subdivision that was initially noticed used the word "consequences." The California Energy Commission raised a clarity issue with respect to use of the word "consequences." As a result of that comment, the Department chose to be more specific and describe those consequences by a term used in SB 617's definition of a "major regulation" and that is the "economic impact" of the regulation. The comments that the Department lacks authority to require the alternatives analysis prior to filing a notice of proposed action with OAL and that such an action is also inconsistent with the law are rejected for the reasons set forth in the responses to comments concerning the original text of section 2002(c)(8) and also for the reasons set forth in the responses to commenter #1 (Dept. of Fish and Wildlife and commenter #2 (Dept. of Insurance) regarding section 2001(d) and to commenter #1 (Dept. of Insurance) regarding section 2002(c)(7). As the court noted in *Samantha C v. State Dept.of*

Comments	Responses
analysis of alternatives also runs amok of the consistency standard of the APA. Subdivision (c) of Government Code section 11346.3 enumerates the components of the SRIA, but does not include analysis of regulatory alternatives. Instead, the SRIA as described in statute contains only information relating to the costs and benefits of proposed regulations themselves. The effect of DoF's new language is to add a new element to the list set forth in Subdivision (c) of Government Code section 11346.3, but "when administrative rules or regulations 'alter or amend the statute…,' they 'are void'." (J. R. Norton Co. v. Agric. Labor Relations Bd. v (1979) 26 Cal.3d 1, 29 (quoting Morris v. Williams (1967) 67 Cal.2d 233, 748).) Finally, this new requirement violates the necessity standard of the APA because it does not accomplish its proposed purpose. Forcing the alternatives analysis into the period preceding the formal rulemaking process virtually guarantees that not all alternatives proposed during the formal rulemaking process will receive the same treatment or scrutiny as alternatives generated prior to notice issuance. It also fails to acknowledge the fact that under the APA rulemaking agencies are free to develop and implement new alternatives not previously considered, by issuing a modified text that takes a new approach to meeting identified needs, in a 15-day comment period.	*Developmental Services* (2010) 185 Cal.App.4th 1462, 1482-1489, 112 Cal. Rptr. 415: "Courts have long recognized that the Legislature may elect to defer to and rely upon the expertise of administrative agencies [citations]." (Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656 [128 Cal.Rptr. 881, 547 P.2d 993].) "Under this standard of review, even though an enabling statute authorizes only `. . . such reasonable rules and regulations as may be necessary . . .' [citation] a court should seek not to determine whether the challenged regulation is strictly `necessary.' Instead it must ascertain whether the agency reasonably interpreted its power in deciding that the regulation was necessary to accomplish the purpose of the statute. Stated another way, the court's role is limited to determining whether the regulation is `reasonably designed to aid a statutory objective.' [Citations.]" (Id. at p. 657.) Accordingly, "`the court will defer to the agency's expertise and will not "superimpose its own policy judgment upon the agency in the absence of an arbitrary and capricious decision." [Citation.]' [Citations.]" (Ford Dealers Assn. v. Department of Motor Vehicles (1982) 32 Cal.3d 347, 355 [185 Cal.Rptr. 453, 650 P.2d 328].) The comment that subdivision(c)(8) violates the necessity standard of the APA "because it does not accomplish its proposed purpose" is rejected as that is not the standard by which necessity is evaluated. Government Code §11349(a) defines necessity as "the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate

Comments	Responses
	the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record." The Department freely recognizes and acknowledges that reasonable alternatives may be discovered at any time during the time leading up to the rulemaking process and during that process itself. Indeed, the formal rulemaking process contemplates that alternatives may be proposed until the very end of the process. This does not mean there is no necessity for subdivision (c)(8).
2. California Energy Commission The Department's proposed regulations impose an unwarranted and significant burden on agencies to extensively analyze alternatives to their proposed major regulations. One source of such burden is proposed Section 2002(c)(8) which requires agencies to identify "the economic impact of each regulatory alternative considered." Because "economic impact" means "all costs or benefits (direct, indirect, and inducted)," this implies that an economic assessment may need to be performed not just on the proposed major regulation, but also on all of its alternatives. This would be extremely burdensome and costly, and it does not appear to yield any additional benefits to the public or to the agency other than to delay the rulemaking and cost taxpayers money. Further, requiring assessments of economic impacts of alternatives is not supported by statute. While the Administrative	**Response:** This comment on the additional requirements from changing "consequences" to "economic impact" was rejected. It was initially the Energy Commission that noted the term "consequences" was vague, and the phrase "economic impact" was substituted to clarify. There are no additional requirements from the change, as agencies are already required to discuss the economic impact of the alternatives considered. Further, such analysis would have informed agency choices regarding the proposed regulation, and thus does not constitute an additional burden. The comment that the modified text makes a new requirement that the SRIA identify the economic impact of regulatory alternatives is rejected. See previous response to Department of Insurance in this section.

Comments	Responses
Procedure Act requires that alternatives be identified and considered, it only requires adopting agencies to describe the results of the comparison of the proposed regulation with the alternatives that were considered and rejected. For example, Government Code section 11346.5, subdivision (a)(13), requires only a statement explaining why the alternatives were rejected, based on the standardized regulatory impact of the proposed regulation only – but not compared with a full SRIA of any alternative. (Accord Gov. Code § 11346.9, subd. (a)(5); see also Gov. Code § 11346.5, subd. (a)(7)(C) [Statement describing comparison to alternatives].) The statutes do not support requiring a complete SRIA of each rejected alternative. Moreover, the requirement that agencies consider alternatives in the SRIA is duplicative of requirements for considering alternatives in the initial statement of reasons that must accompany the SRIA. (See Gov. Code § 11346.2, subd. (b)(4)). This requirement should be deleted in light of these other requirements.	These comments concerning consideration of alternatives are related to the original text, not the modified text, and therefore no response is required. Please see responses to comments concerning the original text of section 2002(c)(8).
Section 2003(b) **1. California Energy Commission** Subdivision (b) permits agencies to use a different projection from the Department of Finance's current publicly available	**Response:** These comments are related to the original text, not the modified text, and therefore no response is required.

Comments	Responses
economic and demographic projections on a case-by-case basis. However, the proposed regulation does not explain what factors justify using a different projection (i.e., the criteria for approving a different projection). This lack of clarity makes it difficult for an agency to determine when and on what basis it may request approval to use different projections and on what grounds the Department would agree to those projections. This will unduly delay the rulemaking process. The proposed regulation should provide criteria for using different projections, or allow different projections upon providing notice to the Department rather than approval by the Department.	(Please see responses to comments concerning the original text of section 2003(b).)
Sections 2003(d) and (e). **1. California Energy Commission** As mentioned above, the requirements for considering and analyzing regulatory alternatives remain unduly burdensome and contrary to the statutory language of SB 617. The express legislative intent for standardized regulatory impact analyses is: To provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute . . . in the least burdensome manner. Regulatory impact analyses shall inform the agencies and the public of the economic consequences of regulatory choices, not reassess statutory policy. The baseline for the regulatory analysis shall be the most cost-effective set of regulatory measures that are equally effective in achieving the purpose of the regulation in a manner that ensures full	**Response:** These comments are related to the original text, not the modified text, and therefore no response is required. (Please see responses to comments concerning the original text of section 2003(d) and (e)).)

Comments	Responses
compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.(Gov. Code, § 11346.3, subd. (e).) This language complements Government Code section 11346.2, subdivision (b), describing reasonable alternatives to be considered and conspicuously omitting "no regulation" as an alternative. In other words, an alternatives analysis for an economic impact statement (distinguished from other comparisons of alternative scenarios, such as in environmental analyses) should compare with other potential regulations, not with no regulations at all. Regulations are the appropriate means for State agencies to implement, interpret, and make specific policy decisions made by the Legislature. These aspects of the proposed regulations should not be adopted. Additionally, the regulations should be clear that all economic impact assessments and comparisons of "regulatory alternatives" are only of alternatives that were considered but rejected in favor of the proposed regulations. As currently drafted, using the phrase "regulatory alternatives" suggests that agencies must actually propose competing regulatory language, and conduct multiple economic impact assessments of competing alternatives.	
Section 2003 (h) **1. Department of Insurance** The new, unambiguous requirement that agencies "shall"	**Response:** The comment that it would be impossible to complete the fiscal analysis in accordance with SAM section 6603 because that section deals only with economic impact on California businesses and not on

Comments	Responses
follow State Administrative Manual (SAM) sections 6601 through 6616 also violates the authority, consistency and necessity standards of the APA. For instance, Subdivision (h) of Section 2003 of the proposed regulation addresses fiscal impact assessments of proposed regulations, but it would be impossible to complete this fiscal analysis in accordance with SAM section 6603 because that section deals exclusively with economic impact on California businesses, not government. Further, SB 617 contains no grant of rulemaking authority that would allow DoF to require rulemaking agencies to complete the economic impact section of the Form 399 when the proposed regulations in question do not have a fiscal impact. Accordingly there is no necessity or authority for the proposed regulations that would enable them to grant legitimacy to the unenforceable underground regulation stated in SAM section 6603. Reference to this section of the SAM must therefore be deleted.	government is rejected because SAM Sections 6603 does not impose any additional requirements required in Government Code §11346.3(a), which applies to all proposed regulations.
To the extent that SAM section 6614 requires the fiscal impact section of the Form 399 to be completed in connection with emergency regulations, the incorporation of that section into the proposed regulations also violates the authority and consistency standards of the APA. As we have previously pointed out, emergency regulations are subject only to Government Code sections 11346.1, 11349.5 and 11349.6. None of these sections contains authority or reference to which DoF could cite as a basis for requiring the economic impact section of the Form 399 to be completed in connection with emergency regulations. Reference to this section of the SAM also must therefore be deleted.	The comment that requiring an agency to comply with SAM section 6614 makes the regulations inconsistent with the law regarding emergency regulations is rejected. The regulations are not inconsistent with the law regarding emergency regulations, as the fiscal impact section of the STD 399 is required only at the time of filing the notice of proposed action with OAL, which is one of the requirements under Govt. Code §11346.1(e) that must be met in order for the emergency regulation to remain in effect for more than 180 days. Govt. Code §11346.36(b)(4) requires the Department's regulations to assist agency in specifying the methodologies for …"[a]ssessing the effects of a regulatory proposal on the General Fund and special funds

Comments	Responses
	of the state and affected local government agencies attributable to the proposed regulation.
Additional Comments **1. California Chamber of Commerce** The California Chamber of Commerce, California Manufacturers and Technology Association, California Building Industry Association, California Business Roundtable, and Western States Petroleum Association are pleased to provide you with comments on the modified proposed Regulations to Implement Senate Bill 617 (Chapter 496, Statutes of 2011), published in the California Regulatory Notice Register on Friday, July 12, 2013, Our organizations represent thousands of businesses that are subject from time-to-time to new and often onerous rules by state regulatory agencies. We have been active in working with both the Executive and Legislative branches to improve state administrative rulemaking, and have commented extensively on these regulations throughout your regulatory process. We appreciate the Department's consistent and thoughtful efforts to translate the legislation into a workable methodology for state agencies to use when analyzing major regulations. The mere fact of the new law was testament to the routine underperformance by agencies in this regard. We believe this new methodology – and diligent monitoring and enforcement by the Department – has the potential to significantly improve the regulatory process and outcomes, to the ultimate benefit of California's economy and	**Response:** This comment in support of the modified text is accepted.

Comments	Responses
reputation. The Department made a change to the draft that we believe improve the regulation. In particular, you clarified that the $50 million threshold for a major regulation is to be calculated over any 12-month period during the ramp-up and full implementation of the rule. This ensures sensitivity to the different manners in which a rule may be implemented while still ensuring that some regulations do not slip under the threshold because they were only partially implemented. This change was in addition to a solid effort in the first instance, including requiring an economic analysis of each alternative and comparing those alternatives to a baseline. This will provide the raw material for agencies to determine which alternative regulatory approach will be the most cost-effective solution to a statutory requirement. Once more, the undersigned organizations are deeply appreciative of the dedication of the Department of Finance in developing these new regulations and in your interest in hearing from us on this matter. Implementation of SB 617 – and improvement of the transparency and effectiveness of the regulatory process generally – is an important step in improving the economic climate of California and sending a signal about rationalizing the relationship between state government and regulated industries. **2. California Energy Commission** The Commission supports the changes to refer only to "any 12-month period" throughout the regulatory language, to simplify the initial reporting requirement in proposed section 2001(a) to	**Response:** This comment in support of the modified text is accepted.

Comments	Responses
remove a "summary," and the simple statement in proposed section 2002(c)(11) that the SRIA must be signed by the head of the agency. These changes clarify the expectations for conducting the SRIA and reduce the administrative burden on agencies.	